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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750-AI00

Defense Federal Acquisition Regulation Supplement: Least Developed Countries that are Designated Countries. (DFARS Case 2013-D019)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a revision by the United States Trade Representative (USTR) to the list of least developed countries that are designated countries under the Trade Agreements Act of 1979.

DATES: Effective: [Insert date of publication in the FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: Amy G. Williams, telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:

I. Background

19 U.S.C. 2511(b)(4) allows the President to designate least developed countries as eligible countries under the Trade

Agreements Act of 1979, allowing non-discriminatory treatment of the products of such countries in acquisitions subject to the World Trade Organization Government Procurement Agreement. This statutory authority has been delegated to the United States Trade Representative (USTR). The USTR selects the countries for such designation from the United Nations (UN) Least Developed Countries List. The USTR consults with other Government agencies on trade policy matters through the Trade Policy Review Group and the Trade Policy Staff Committee. These changes are necessary to reflect the UN General Assembly's current list of least developed countries. Based on changes to the UN Least Developed Countries List and the approval of the Trade Policy Staff Committee, the USTR has revised the list of least developed countries that are designated as eligible countries as follows:

- Changed the name of East Timor to Timor-Leste, reflecting the changed name on the UN list.
- Removed the Maldives, which is no longer a least developed country.
- Added South Sudan, which seceded from Sudan to form an independent state on July 9, 2011, and was formally recognized as a least developed country by the UN in December 2012.

Although the United States continues to impose sanctions against Sudan, South Sudan is not subject to sanctions.

This final rule revises the definitions of "designated country" in various DFARS clauses (DFARS 252.225-7017, Photovoltaic Devices; DFARS 252.225-7021, Trade Agreements; and DFARS 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements).

II. Publication of this final rule for public comment is not required by statute

"Publication of proposed regulations," 41 U.S.C. 1707, is the statute that applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment, because it only revises the list of least developed countries that the USTR has designated as eligible for non-discriminatory treatment under the Trade Agreements Act. Addition of South Sudan and removal of Maldives will have no significant effect beyond the internal operating procedures of the Government or a significant cost or administrative impact on contractors or offerors.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, it was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1 and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 252

Government procurement.

Manuel Quinones,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 252 continue to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

252.225-7017 [Amended]

2. Amend section 252.225-7017 by—

- a. Removing the clause date "(DEC 2012)" and adding "(AUG 2013)" in its place; and
- b. In paragraph (a), in the definition of "Designated country" in paragraph (iii), removing the countries of "East Timor" and "Maldives" and adding , in alphabetical order, the countries of "South Sudan" and "Timor-Leste".

252.225-7021 [Amended]

3. Amend section 252.225-7021 by—

- a. Removing the clause date "(DEC 2012)" and adding "(AUG 2013)" in its place; and
- b. In paragraph (a), in the definition of "Designated country" in paragraph (iii), removing the countries of "East Timor" and

"Maldives" and adding, in alphabetical order, the countries of "South Sudan" and "Timor-Leste".

252.225-7045 [Amended]

4. Amend section 252.225-7045 by—

- a. Removing the clause date "(NOV 2012)" and adding "(AUG 2013)" in its place; and
- b. In paragraph (a), in the definition of "Designated country" in paragraph (3), removing the countries of "East Timor" and "Maldives" and adding, in alphabetical order, the countries of "South Sudan" and "Timor-Leste".

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